

compensation should be. The clause "effectively realizable" was included in our Treaties of Friendship, Commerce and Navigation mainly out of concern over certain types of abuse (especially in large-scale nationalization programs), typical of which have been long-term non-negotiable bonds. This is an example cited in the draft letter.

The clause "effectively realizable" did not contemplate requiring payments in dollars. From the beginning of the post-war treaty program a definite relationship has existed between the compensation provision and the exchange control provision. Uniformly, compensation paid under the terms of the expropriation provision has been convertible and withdrawn only in accordance with the terms of the exchange control provision. For example, in the Treaty with China (TIAS 1871) Article VI, paragraph 2, explicitly subjects the withdrawal of compensation to the exchange control provision of Article XIX, paragraph 3, by providing as follows:

"The recipient of such compensation which, in conformity with such applicable laws and regulations as are not inconsistent with paragraph 3 of Article XIX of this treaty, be permitted without interference to withdraw the compensation by obtaining foreign exchange, in the currency of the High Contracting Party of which such recipient is a national, corporation or association, etc."

Similarly, there is a direct reference in the Treaty with Italy (TIAS 1965) in the compensation article to the exchange control provisions of the treaty. Thus, in Article V, paragraph 2, is provided:

"The recipient of such compensation which, in conformity with such applicable laws and regulations as are not inconsistent with paragraph 3 of Article XVII of this treaty, be permitted without interference to withdraw the compensation by obtaining foreign exchange in the currency of the High Contracting Party of which such recipient is a national, corporation or association, etc."

Your

DEPARTMENT OF STATE A/OSC/MR

REVIEWED BY _____ DATE _____

RDS ☐ or XDS ☐ EXT. DATE _____
TS AUTH. _____ R/S/IN ST _____

ENDORSE EXISTING MATERIALS ☐

FOR REVIEW ☐ E. L. LACABE ☐

ARE DATED ☐

EXEMPTIONS

Your attention is invited to the more recent Treaty with Germany (TIAS 3593) which, in Article XII, paragraph 6, provides as follows:

"All questions arising under the present treaty concerning foreign exchange restrictions will be governed by the provisions of the present article."

A comparable provision appears in Article VI, paragraph 2, of the Netherlands Treaty (TIAS 3942).

Insofar as the Japanese Treaty is concerned, the agreed minutes of negotiation contain the following statement which was made at the third meeting on February 29, 1952:

"Mr. Yakawa asked whether he might understand that the phrase in paragraph 3 /Article VI, paragraph 3/ reading "compensation shall be in an effectively realizable form" when property is taken, means that compensation may be paid in local currency, since the question of the remittance of such compensation is governed by Article XII."

"Mr. Bassin said that this understanding was correct."
(page 6)

This agreed minute was reviewed and approved by the Department before initialling by the principal negotiators.

The reply to the Ford Motor Company on this point is a reiteration of established US treaty policy. Since this policy has been maintained consistently throughout the post-war treaty program, detailed examination of the records of pertinent negotiations, at least thirty in number, serves to confirm the examples cited above. The negotiating experience has been that foreign countries tend, in light of the exchange control provisions, to accept this provision as not requiring payment in dollars and to direct their inquiries rather to the compatibility with this rule of provisions for compensation in long-term bonds and the like.

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In view of the foregoing, it is recommended that you agree to transmit this information as paraphrased in the draft letter to the Ford Motor Company.

cc: Mr. Maurer - FE
Mr. Sullivan - CPT

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